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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

ABCO West Electrical Construction &
Design, L.L.C. and ABCO Electrical
Construction & Design, L.L.C.,

Defendants.

COMPLAINT

JURY DEMAND

NATURE OF THE ACTION

This is an action under Title I and Title V of the Americans with Disabilities Act of 1990, as amended, and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Billy Hackney, a person with a disability who was adversely affected by such practices. The Commission alleges that Defendants ABCO West Electrical Construction & Design and ABCO Electrical Construction & Design (hereinafter "Defendants" or "ABCO") discriminated against Mr. Hackney because of his disability including but not limited to

1 terminating Mr. Hackney's employment because of his disability and in retaliation for
2 his requests for accommodations, and failing to rehire Mr. Hackney because of his
3 disability and in retaliation against Mr. Hackney because he engaged in protected
4 activity.
5

6 **JURISDICTION AND VENUE**

7 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,
8 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section
9 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), as amended, 42 U.S.C.
10 § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of
11 the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5 (f)(1) and(3) ("Title
12 VII"), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.
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14

15 2. The employment practices alleged to be unlawful were committed within
16 the jurisdiction of the United States District Court for the District of Arizona.
17

18 **PARTIES**

19 3. Plaintiff, the Equal Employment Opportunity Commission, is the agency
20 of the United States of America charged with the administration, interpretation and
21 enforcement of Title I of the ADA and is expressly authorized to bring this action by
22 Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference
23 Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).
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25

26 4. At all relevant times, ABCO West Electrical Construction & Design, has
27 continuously been an Arizona corporation doing business in the State of Arizona and
28 has continuously had at least 15 employees.

1 5. At all relevant times, ABCO Electrical Construction & Design, has
2 continuously been an Illinois corporation doing business in the State of Arizona as a
3 joint employer with ABCO West Electrical Construction & Design, and has
4 continuously had at least 15 employees.
5

6 6. At all relevant times, ABCO West Electrical Construction & Design has
7 continuously been an employer engaged in an industry affecting commerce within the
8 meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the
9 ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h)
10 of Title VII, 42 U.S.C. §§ 2000e(g) and (h).
11

12 7. At all relevant times, ABCO Electrical Construction & Design has
13 continuously been an employer engaged in an industry affecting commerce within the
14 meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the
15 ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h)
16 of Title VII, 42 U.S.C. §§ 2000e(g) and (h).
17
18

19 8. At all relevant times, ABCO West Electrical Construction & Design has
20 been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).
21

22 9. At all relevant times, ABCO Electrical Construction & Design has been a
23 covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).
24

STATEMENT OF CLAIMS

25 10. More than thirty days prior to the institution of this lawsuit, Billy
26 Hackney filed a charge with the Commission alleging violations of Title I of the ADA
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28

1 by Defendants. All conditions precedent to the institution of this lawsuit have been
2 fulfilled.

3 11. Billy Hackney is a person with a disability as defined by the ADA. Mr.
4 Hackney has an amputated right leg. As a result of his amputation, Mr. Hackney is
5 substantially limited in one or more major life activities, including but not limited to the
6 major life activity of walking.
7

8 12. Billy Hackney was employed by Defendants from approximately June 15,
9 2009 to June 25, 2009 as a Journeyman / Wireman, and he was and remains capable of
10 performing the essential functions of that job with or without a reasonable
11 accommodation.
12

13 13. On or about June and July 2009, Defendants engaged in the following
14 unlawful employment practices at their Phoenix, Arizona facility, in violation of
15 Title I of the ADA, Sections 102(a) and (b), and Title V of the ADA, Sections 503(a)
16 and (b), 42 U.S.C. §§ 12112(a) and (b), and § 12203(a) and (b):
17

- 18 (a) denying and interfering with Billy Hackney's employment
19 opportunities based on his need for reasonable accommodation;
20
21 (b) terminating Billy Hackney's employment because of his disability
22 and in retaliation for his requests for reasonable accommodation;
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24 (c) refusing to rehire Billy Hackney because of his disability and in
25 retaliation for his requests for reasonable accommodation and his
26 protected activity in reporting Defendants' discriminatory actions
27 to his labor union and the Commission.
28

1 14. The effect of the practices complained of in paragraph 13 above by
2 Defendants has been to deprive Billy Hackney of equal employment opportunities and
3 otherwise adversely affect his status as an employee and job applicant because of his
4 disability.
5

6 15. The unlawful employment practices complained of in paragraph 13 above
7 by Defendants were intentional.
8

9 16. The unlawful employment practices complained of in paragraph 13 above
10 by Defendants were done with malice or with reckless indifference to the federally
11 protected rights of Billy Hackney.
12

13 **PRAYER FOR RELIEF**

14 WHEREFORE, the Commission respectfully requests that this Court:

15 A. Grant a permanent injunction enjoining ABCO West Electrical
16 Construction & Design and ABCO Electrical Construction & Design, their officers,
17 successors, assigns, and all persons in active concert or participation with them, from
18 terminating, refusing to hire and/or rehire, and retaliating against qualified individuals
19 with disabilities because of their disabilities or in retaliation for their protected
20 complaints or engaging in any other employment practice which discriminates on the
21 basis of disability;
22
23

24 B. Order ABCO West Electrical Construction & Design and ABCO
25 Electrical Construction & Design to institute and carry out policies, practices, and
26 programs that provide equal employment opportunities for qualified individuals with
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28

1 disabilities, and that eradicate the effects of its past and present unlawful employment
2 practices;

3 C. Order ABCO West Electrical Construction & Design and ABCO
4 Electrical Construction & Design to make Billy Hackney whole, by providing
5 appropriate backpay with prejudgment interest, in amounts to be determined at trial,
6 and other affirmative relief necessary to eradicate the effects of its unlawful
7 employment practices, including but not limited to the rightful-place hiring of Billy
8 Hackney;
9
10

11 D. Order ABCO West Electrical Construction & Design and ABCO
12 Electrical Construction & Design to make whole Billy Hackney by providing
13 compensation for past and future pecuniary losses resulting from the unlawful
14 employment practices described in paragraph 13 above, including job search expenses,
15 in amounts to be determined at trial;
16
17

18 E. Order ABCO West Electrical Construction & Design and ABCO
19 Electrical Construction & Design to make whole Billy Hackney by providing
20 compensation for past and future nonpecuniary losses resulting from the unlawful
21 employment practices described in paragraph 13 above, including emotional pain,
22 suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be
23 determined at trial;
24
25

26 F. Order ABCO West Electrical Construction & Design and ABCO
27 Electrical Construction & Design to pay Billy Hackney punitive damages for their
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malicious and reckless conduct, as described in paragraph 13 above, in amounts to be determined at trial;

G. Grant such further relief as the Court deems necessary and proper and in the public interest;

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by this complaint.

RESPECTFULLY SUBMITTED this 20th day of September, 2011.

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PLEASE NOTE:

**For the purposes of service upon the EEOC,
it is sufficient that pleadings, notices, and
court documents be served upon the Trial Attorneys.**